

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT INSOLVENCY (AMENDMENT)
(EU EXIT) (NO. 2) REGULATIONS 2019

Tuesday 22 October 2019

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The Committee consisted of the following Members:

Chair: MARK PRITCHARD

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| † Beckett, Margaret (<i>Derby South</i>) (Lab) | † Pearce, Teresa (<i>Erith and Thamesmead</i>) (Lab) |
| † Crouch, Tracey (<i>Chatham and Aylesford</i>) (Con) | Smith, Nick (<i>Blaenau Gwent</i>) (Lab) |
| † Duguid, David (<i>Banff and Buchan</i>) (Con) | † Sobel, Alex (<i>Leeds North West</i>) (Lab/Co-op) |
| † Esterson, Bill (<i>Sefton Central</i>) (Lab) | † Stewart, Iain (<i>Milton Keynes South</i>) (Con) |
| † Evennett, Sir David (<i>Bexleyheath and Crayford</i>) (Con) | † Thewliss, Alison (<i>Glasgow Central</i>) (SNP) |
| Farrelly, Paul (<i>Newcastle-under-Lyme</i>) (Lab) | † Tolhurst, Kelly (<i>Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy</i>) |
| † Harper, Mr Mark (<i>Forest of Dean</i>) (Con) | † Watling, Giles (<i>Clacton</i>) (Con) |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | Peter Stam, <i>Committee Clerk</i> |
| † Miller, Mrs Maria (<i>Basingstoke</i>) (Con) | |
| Murray, Ian (<i>Edinburgh South</i>) (Lab) | † attended the Committee |

Eighth Delegated Legislation Committee

Tuesday 22 October 2019

[MARK PRITCHARD *in the Chair*]

Draft Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Kelly Tolhurst): I beg to move,

That the Committee has considered the draft Insolvency (Amendment) (EU Exit) (No. 2) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Pritchard. The draft regulations were laid before the House on 22 July. They supplement the Insolvency (Amendment) (EU Exit) Regulations 2019, which Parliament approved earlier this year, and will ensure that UK insolvency law still operates effectively should we leave the EU without a withdrawal agreement. The draft regulations particularly address a consequence of the change in the date of the UK's departure from the European Union. They update the preparations that we have already made in case we leave the EU without a withdrawal agreement, and take into account new law that has come into effect since 29 March.

I emphasise that the Government and the UK insolvency sector agree that our co-operation with the EU in this area should continue. It is beneficial for both the UK and the EU, and reaching a deal with the EU before or after exit day remains a priority. That co-operation is underpinned by the rules in the EU insolvency regulation, which provides a framework for the mutual cross-border reciprocity of insolvency matters. Under those EU rules, once main insolvency proceedings have been opened in a single member state, the insolvency practitioner appointed to those proceedings can deal with assets throughout the EU. That is cost-efficient and effective; it gives us the best possible chance of rescuing insolvent businesses and returns as much money as possible to creditors.

In preparing to leave the EU, we must ensure that cross-border insolvencies can still be dealt with efficiently. If there is no withdrawal agreement, however, we cannot rely on the continuation of reciprocity arrangements, which is why the Government introduced the earlier regulations. That statutory instrument, which Parliament passed in January, aimed to prevent an imbalance whereby the UK has to recognise insolvency practices and court judgments originating in the EU with no guarantee of recognition from the EU of UK insolvencies, as the UK would no longer be a member state. The earlier regulations therefore remove the majority of the EU insolvency regulation from UK law.

The only part of the EU regulation that will be retained rather than revoked is the section dealing with jurisdiction when opening insolvency proceedings. The earlier regulations ensure that our courts are not restricted by EU rules in opening insolvency proceedings in the UK. We will keep the same categories of cross-border

proceedings, which will help courts in EU member states to assess UK insolvency cases and may smooth the process of acceptance for UK cases under their domestic law. The earlier regulations also removed references to the EU rules from our law as it stood on 29 March. Since we cannot guarantee that UK orders will continue to receive automatic recognition in the EU, it is right that insolvencies commenced in the EU will not be automatically recognised in the UK.

The draft regulations, which the Government have introduced with the consent of the Scottish Government and the Scottish Parliament, are needed for two reasons. First, they extend the provisions contained in the earlier regulations to the modernised Scottish insolvency rules. The new Scottish legislation came into force after 31 March, so it was not possible to amend it with the earlier regulations. To ensure that we are consistent in our approach to cross-border insolvencies throughout the UK and provide legal certainty, the draft regulations update the new Scottish rules by removing current references to EU insolvency law.

Secondly, the draft regulations deal with one of the articles of the EU insolvency regulation. Unlike the majority of the EU regulation, which has been in force since 2017, article 25 came into force on 26 June 2019. As it was not previously expected to be in force on exit day, it was not appropriate to revoke it in the earlier insolvency regulations. Article 25 relates to the EU's legal obligations to integrate member states' insolvency registers, so that they can be searched centrally. If the UK is not participating in the system of mutual recognition and co-operation, it would be inappropriate to incur the costs involved in a measure associated with the rest of the framework. Therefore, our second set of EU exit regulations will ensure that article 25 is revoked on 31 October should we leave without a withdrawal agreement.

The Government's assessment is that losing automatic recognition of UK insolvencies in the EU will result in an increased cost for insolvencies in the region of £2.7 million per year. It has not been possible to estimate the additional indirect impacts on the UK insolvency sector of the loss of co-operation, or the indirect impact on the wider economies of the UK and the EU member states. However, our two EU exit instruments in this area combine to ensure that the direct impact of leaving the EU will not be exacerbated by retaining inoperable laws, which could lead only to a lack of clarity on their application, increased costs and reduced returns to creditors in insolvency situations.

The insolvency and legal services sectors were encouraged to submit their views on the policy we adopted when the Government introduced the first set of EU exit regulations. Senior insolvency professionals and R3, the insolvency trade body, all confirm their support for this approach.

Without these regulations, if we leave the EU without a withdrawal agreement, the law in Scotland will not operate effectively and article 25 of the EU insolvency regulation will continue to be part of our law. Therefore, if the regulations are not passed today, the outcome will be uncertainty for individuals and businesses dealing with insolvencies in Scotland, and for insolvency practitioners managing those cases. Failing to prepare properly can lead only to increased costs and delays, lower returns to creditors and fewer businesses being rescued.

I therefore commend these regulations to the Committee.

2.36 pm

Bill Esterson (Sefton Central) (Lab): It is a pleasure, Mr Pritchard, to see you in the Chair this afternoon.

We are being asked to approve the regulations, or our amendments to the regulations, which were already agreed in January; the Minister has gone through them in some detail and I have no objection to what she said. The Committee is here to apply section 8 of the European Union (Withdrawal) Act 2018, in so far as it relates to the failure of retained EU law to operate efficiently. We will not oppose the measure. For the record, that is in stark contrast with the Committee that the hon. Member for Glasgow Central and I attended yesterday, where that was anything but the case. I will just put on the record that the Committee's proceedings are an appropriate use of the powers in the Act, and I am glad that the Government have returned to that appropriate use and to the promise they made—namely, that they would not make major policy changes and they would not affect rights.

Mostly these regulations are minor technical changes, as the Minister said, to what was passed in January; I do not intend to revisit what I said then. Those changes include Scotland-only regulations, as insolvency is a devolved matter, and my understanding is that they have the support of the Scottish Government. The regulations passed in January had industry support, but can the Minister say what discussions took place with industry about the changes? The explanatory notes and the Minister in her speech referred to the consultation with the Scottish Government, but can she just catch us up on the consultation with industry on these additional minor changes?

The regulations relate to no-deal preparations. At the moment in the Chamber, my right hon. Friend the Leader of the Opposition is responding to the Second Reading debate on the European Union (Withdrawal Agreement) Bill. However, even if the Bill is passed, there is still the very real threat that no deal could happen, because—this is one of the great weaknesses of the Bill—the default position at the end of December 2020, in the event that a free trade agreement has not been negotiated by the Government, is for us to leave without a withdrawal agreement being in place; the Minister referred to that. We would leave with no deal at the end of December 2020, according to the legislation that is currently being debated in the Chamber. One of the reasons that is a real concern is because it takes many years to negotiate free trade agreements. That threat must be taken seriously.

Can the Minister confirm that the regulations and many others that have been passed in Committees such as this one, including in Committees that the Minister and I have attended, as a result of that serious weakness—one of many—in the European Union (Withdrawal Agreement) Bill, leave open the strong prospect of no deal? Will these no-deal regulations remain potentially necessary for implementation, not just on 1 November 2019 if the Bill is rejected and we leave with no deal on Halloween, but on 1 January 2021 if the Bill passes? Perhaps she can confirm that they will still apply, be relevant and be available, if needed.

Although we will not oppose the regulations, we will continue, for the reasons I have just set out, to do all we can to prevent no deal, not least to ensure that regulations, including these ones, never need to be enacted.

2.41 pm

Alison Thewliss (Glasgow Central) (SNP): I will be brief. I welcome the consultation with the Scottish Government and the recognition that personal insolvency is a devolved matter, and that the regulations are necessary in the event of no deal. My wider concern is the broader economic impact of Brexit—of losing access to the single market. The Fraser of Allander Institute estimates that Brexit will cost 100,000 jobs in Scotland, which will involve some degree of insolvency. We must be realistic about that.

I note that there is no impact assessment, because the Government estimate that it is under £2.7 million per year, as was laid out by Lord Duncan of Springbank when the matter was discussed in the House of Lords. Could the Minister give further detail on how that figure was arrived at?

The SNP will not oppose the regulations. They seem necessary, as the hon. Member for Sefton Central said, unlike the delegated legislation that we faced yesterday. This is a far more appropriate use of statutory instruments. I am content to let this one go.

2.42 pm

Kelly Tolhurst: I thank the hon. Member for Sefton Central. Part of the joy of my work has been standing opposite him in Committee numerous times over the past 12 months. He is probably unhappy with that, but I thank him for his comments on the regulations. I will answer a couple of his points.

On consulting particular stakeholders about the regulations, there was no formal consultation, but the Insolvency Service regularly engages with and meets all stakeholders in that area, particularly R3, one of the insolvency practitioners, which fed in its comments. There has been no formal consultation, but those organisations have had many opportunities to feed in comments and speak to the Insolvency Service.

On the hon. Gentleman's particular points on no deal, he will know that there is a Bill on the Floor of the House today, which states that we will be able to agree a free trade agreement by the end of December 2020. That agreement is the will not only of the UK, but of the EU. The Prime Minister has made a commitment with the European Union to deliver that by December 2020. I might be going off the subject slightly here, but I encourage the hon. Member for Sefton Central to support the Prime Minister and the deal today so that we can deliver mutual co-operation on insolvency rules going forward. That will absolutely prevent no deal.

I thank the hon. Member for Glasgow Central for her comments. I also thank the Scottish Government and Parliament for their co-operation and their work with us in this area. She is correct on the impact assessment. It was £2.7 million and regarded as de minimis, but the cost has developed from the costs related to establishing insolvencies in other EU states, which would have additional costs if we were not aiming to have an agreement. That is where the impact assessment has come from.

[Kelly Tolhurst]

To sum up, the changes proposed by the regulations ensure clarity and legal consistency across the United Kingdom for people using the insolvency regime. The regulations also ensure that the United Kingdom is not bound by the obligations of the EU insolvency regulation

when the UK will no longer benefit from that regime. I commend the regulations to the Committee.

Question put and agreed to.

2.46 pm

Committee rose.

